the purchase price. After delivery of the register to the buyer, but before the maturity of the note, the register was accidentally destroyed. *Held*, that the plaintiff can recover on the note. *National Cash Register Co.* v. *South Bay Club House Association*, 64 N. Y. Misc. 125 (Sup. Ct.).

The present decision is the first in New York squarely placing the risk of loss in a conditional sale upon the buyer. See *Humeston* v. *Cherry*, 23 Hun (N. Y.) 141. *Contra*, *Wolf* v. *Di Lorenzo*, 21 N. Y. Misc. 521. For a discussion of the principles involved, see 9 HARV. L. REV. 106; 13 *ibid.* 608; 14 *ibid.* 626; 19 *ibid.* 388.

SALES — STOPPAGE IN TRANSITU — BROKEN TRANSIT. — A bought goods of B in the city of M, F. O. B. at M, to be marked "NXZ Adelaide," and sent to C at the city of L, for loading on ships. C was a forwarding agent, and had received orders from A to forward such goods by ship to Adelaide. Before the ship sailed, but after the goods had been loaded on board, A became bankrupt, and B served notice to stop *in transitu*. *Held*, that the notice is effective. *Kemp* v. *Ismay, Imrie & Co.*, 100 L. T. R. 996 (Eng., K. B. D. Mch. 29, 1909). See NOTES, p. 142.

SET-OFF AND COUNTERCLAIM — RECOUPMENT AGAINST CREDITOR'S ASSIGNEE. — A contractor assigned to the plaintiff his claim against the defendant for payment due under two building contracts. After the defendant had notice of the assignment, the assignor failed to complete the buildings. *Held*, that in an action by the plaintiff on the assigned claim, the defendant can recoup for the assignor's default. *American Bridge Co. of New York* v. *City of Boston*, 88 N. E. 1089 (Mass.).

The statutes of set-off do not allow a debtor to set off against his creditor's assignee a debt from the assignor which matured after notice of the assignment. *Watson* v. *Mid Wales Railway Co.*, L. R. 2 C. P. 593. After the ownership of the claim has by notice to the debtor vested in the assignee, a claim maturing against the assignor is no longer a debt from the owner of the principal claim. *Meyers* v. *Davis*, 22 N. Y. 489. *Cf. St. Andrew* v. *Manchaug Mfg. Co.*, 134 Mass. 42. Since counterclaim, too, is a cross action, the same rule is probably applicable. *Spencer* v. *Babcock*, 22 Barb. (N. Y.) 326. The better explanation of the common law remedy of recoupment is that the defendant attacks the plaintiff's cause of action by showing that he has failed in counter performance, wherefore the defendant need not perform his promise, but only compensate the plaintiff for what he has done. See *Mondel* v. *Steel*, 8 M. & W. 858. But see *Dushane* v. *Benedict*, 120 U. S. 630. *Cf. Basten* v. *Butter*, 7 East 479. Under this doctrine the principal case is sound. Against the assignee the debtor may well attack the validity of the contract sued on; for assignment cannot cure inherent weakness. *Ford* v. *White*, 16 Beav. 120.

SURETYSHIP — NATURE OF SURETYSHIP CONTRACT — GUARANTY. — The plaintiff bank agreed to rediscount certain notes made by customers of the defendant bank, in consideration whereof the defendant bank orally agreed to guarantee the payment of the notes at maturity. *Held*, that the plaintiff bank may recover on the promise. *Bank of Pike* v. *People's National Bank*, 118 N. Y. Supp. 641 (Sup. Ct.). See notes p. 136.

TRUSTS — CESTUI'S INTEREST IN THE RES — RIGHT OF CESTUI'S EXECUTOR TO UNEXPENDED INCOME OF SPENDTHRIFT TRUST. — The testatrix left personalty to trustees to apply the income to the support and maintenance of her imbecile nephew and after his death to the trustees absolutely. *Held*, that the unexpended income goes to the trustees, and not to the *cestui's* administrator. *Ross's Estate*, 66 Leg. Int. 562 (Pa., Dist. Ct.).

At common law accumulated income became a part of the principal of the

trust estate, and, in the absence of any provision to the contrary, was distributed as such. *Huber's Appeal*, 80 Pa. St. 348. Since the decision establishing this rule in Pennsylvania, however, trusts for accumulation have been declared invalid in that jurisdiction. ACT OF APRIL 18, 1853. PA. LAWS, 507. Yet an accumulation to provide for contingencies within reasonable limits may be sustained. *Howell's Estate*, 180 Pa. 515. It is, then, a reasonable presumption that the testatrix did not intend to add to the principal fund by any accumulated income. So it seems to follow that she has not attempted to dispose of the income beyond its use for the nephew's benefit. The interest of the latter was that of *cestui* of a spendthrift trust. See *Broadway Nat. Bank* v. *Adams*, 133 Mass. 170. His sole right was to compel an execution of the trust and an application of the income to his use. *Scott* v. *Nevins*, 6 Duer (N. Y.) 672, 676. Consequently, since the *cestui* had a right to have the income applied to his use, and since the testator showed no intent otherwise to dispose of it, it is submitted that the claim of the *cestui's* administrator should have been allowed, as it was in another recent case in the same jurisdiction. *In re Walter's Estate*, 72 Atl. 1062 (Pa.).

TRUSTS — CREATION AND VALIDITY — TENTATIVE TRUSTS. — The deceased opened separate bank accounts in his own name, as trustee for his several children. Each child was informed of his account with the additions made to it thereafter, and told that the money would be at his disposal upon reaching majority. When the father died, he was still in possession of the bank books and the deposits stood intact, although the children had all attained majority. *Held*, that the trusts had become irrevocable before the father's death, and therefore are not subject to the transfer tax. *Matter of Pierce*, 132 N. Y. App. Div. 465.

The doctrine of "tentative trusts" seems to be peculiar to modern New York law. Whether a particular act is intended for a declaration of trust is normally a question of fact for a jury. *Merigan* v. *McGonigle*, 205 Pa. St. 321. An early New York case, however, held the mere fact of a deposit by A in trust for B conclusive of a trust. *Martin* v. *Funk*, 75 N. Y. 134. But in Massachusetts it was held that there could be no trust without notice to the *cestui que trust*. *Clark* v. *Clark*, 108 Mass. 522. The practice of fictitious trust accounts in savings banks led to a modification of the early New York rule, and the single fact of a deposit by A in trust for B is now held to constitute only a tentative trust, revocable by A at will. *Matter of Totten*, 179 N. Y. 112. If the trust remains unrevoked and unexplained at A's death, the trust is effectual. See *Cunningham* v. *Davenport*, 147 N. Y. 43, 47. Any facts showing an intent to give the *cestui que trust* a vested interest will make the trust irrevocable from the outset. *Farleigh* v. *Cadman*, 159 N. Y. 169. This doctrine carries out the real purpose of the depositor, and the result in the principal case seems sound.

TRUSTS — RIGHTS AND LIABILITIES OF THIRD PARTIES — LIABILITY FOR INDUCING BREACH OF TRUST. — By a contract of sale, the vendee agreed to pay the purchase price to the wife of the vendor. The defendant, a creditor of the vendor, wrongfully induced the vendee to make the payment to him. Thereafter the vendee became insolvent. *Held*, that the vendor's wife can recover from the defendant damages for procuring a breach of trust. *Grant* v. *Bacon*, 127 L. T. 299 (Eng., Margate County Ct.).

It is well settled that a person who, without legal justification, induces a promisor to break his contract, thereby renders himself liable in tort to the promisee. *Lumley* v. *Gye*, 2 E. & B. 216. This principle has been much extended. Thus a spiteful interference with a man's business relations is actionable though no breach of contract results. *Quinn* v. *Leathem*, [1901] A. C. 495. And a defendant has been held answerable in damages for inducing the plaintiff's husband to leave the state in order to avoid the payment of alimony. *Hoefler* v. *Hoefler*, 12 N. Y. App. Div. 84. Although there seem to be no adjudicated cases upon the tort liability which a defendant incurs by procuring another to commit a breach